

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LIONEL COLLINS, SR.,

Plaintiff,

v.

UNITED STATES DEPT. OF NAVY,

Defendant.

CASE NO. C07-5579BHS

ORDER DISMISSING  
ACTION WITHOUT  
PREJUDICE

This matter comes before the Court on the Court's Order to Show Cause (Dkt. 18). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby dismisses this action without prejudice herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On December 5, 2007, Plaintiff Lionel Collins Sr. filed a complaint alleging civil rights violations by the United States Department of the Navy. Dkt. 7. On December 10, 2007, the Court entered a Minute Order setting April 8, 2008, as the deadline for the filing of a combined Joint Status Report. Dkt. 9.

On December 19, 2007, plaintiff filed an Affidavit of Mailing Summons and Complaint indicating that he had served the department of the Navy and the United states Attorney General in Washington D.C. Dkt. 10.

1 On March 17, 2008, Plaintiff filed a Motion for Default Judgment. Dkt. 13. On  
2 April 23, 2008, the Court denied that motion stating that: "Plaintiff failed to effectuate  
3 service properly on Defendant pursuant to Fed. R. Civ. P. 4(i)(1) and therefore the motion  
4 for judgment by default should be denied." Dkt. 16.

5 On May 28, 2008, the Court issued an Order to Show Cause why the parties have  
6 not submitted a Joint Status Report and why the action should not be dismissed. Dkt. 18.  
7 On June 10, 2008, Plaintiff filed a Response to Order to Show Cause. Dkt. 20. Plaintiff  
8 has advanced five reasons for why this case should not be dismissed: 1) Plaintiff claims  
9 that he has properly served the U.S. Navy, the U.S. Attorney General, and the Local U.S.  
10 Attorney; 2) Plaintiff filed a motion for default; 3) Plaintiff filed a motion for  
11 reconsideration of the order denying the motion for default; 4) the U.S. Navy is not  
12 cooperating; and 5) a terrible injustice was committed and those who committed it should  
13 take responsibility. *See* dkt. 20 at 1. To date, the parties have not filed a Joint Status  
14 Report.

## 15 II. DISCUSSION

16 Under Federal Rule of Civil Procedure 4, the plaintiff is responsible for having the  
17 summons and complaint served within 120 days after the complaint is filed. Fed. R. Civ.  
18 P. 4(b), (m). If the defendant is not served within 120 days, the Court must dismiss the  
19 action without prejudice or order that service be made within a specified time. Fed. R.  
20 Civ. P. 4(m).

21 Under Federal Rule of Civil Procedure 4(i), the plaintiff must follow special  
22 procedures when they are attempting to serve the United States or an agency of the  
23 United States. Fed. R. Civ. P. 4(i). To serve an agency of the United States, the plaintiff  
24 must serve the United States as outlined in Fed. R. Civ. P. 4(i)(1) and send a copy of the  
25 summons and of the complaint by registered or certified mail to the agency. Fed. R. Civ.  
26 P. 4(i)(2). To serve the United States, the plaintiffs must:

27 (A) (i) deliver a copy of the summons and of the complaint to the  
28 United States attorney for the district where the action is brought--or to an

1 assistant United States attorney or clerical employee whom the United  
2 States attorney designates in a writing filed with the court clerk--or

3 (ii) send a copy of each by registered or certified mail to the  
4 civil-process clerk at the United States attorney's office;

5 (B) send a copy of each by registered or certified mail to the  
6 Attorney General of the United States at Washington, D.C.; and

7 (C) if the action challenges an order of a nonparty agency or officer  
8 of the United States, send a copy of each by registered or certified mail to  
9 the agency or officer.

10 Fed. R. Civ. P. 4(i)(1).

11 Plaintiff has not provided the Court with proof of service upon the United States  
12 attorney for the Western District of Washington. Thus, Plaintiff has failed to show that  
13 the Defendant has been properly served within 120 days from the date the complaint was  
14 filed. The Court must either dismiss this action or order that service be made within a  
15 specified time. Plaintiff has had ample time to properly serve the Defendant. Plaintiff  
16 has also been informed that his service was improper. *See* dkt. 16 (denial of default  
17 judgment due to improper service). Therefore, there is no reason to allow Plaintiff extra  
18 time to effectuate service.

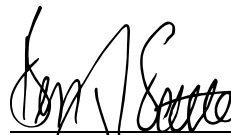
19 In addition, Plaintiff has failed to establish relevant cause for why he has not filed  
20 a Joint Status Report. Although Plaintiff does set forth some arguments for cause, none  
21 of those arguments are persuasive.

### 22 **III. ORDER**

23 Therefore, it is hereby

24 **ORDERED** that this action is **DISMISSED without prejudice**.

25 DATED this 17th day of June, 2008.

26   
27 BENJAMIN H. SETTLE  
28 United States District Judge